

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-10511-WGY  
Vol. 2, Pages 94-168

UNITED STATES OF AMERICA, et al  
Plaintiffs

vs.

JETBLUE AIRWAYS CORPORATION,  
et al,  
Defendants

\*\*\*\*\*

For Bench Trial Before:  
Judge William G. Young

United States District Court  
District of Massachusetts (Boston)  
One Courthouse Way  
Boston, Massachusetts 02110  
Wednesday, November 15, 2023

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One Courthouse Way, Boston, MA 02110

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I N D E X

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1 (Proceedings, 11:20 a.m.)

2 THE COURT: Court is in session, please be seated.  
3 Mr. Briggs, you may continue.

4 MR. BRIGGS: Thank you.

5 EVAN JARASHOW, (Resumed)

6 DIRECT EXAMINATION, (Cont'd.)

7 BY MR. BRIGGS:

8 Q. Mr. Jarashow, before the break we were looking at  
9 Exhibit 786, which is FB in your binder. Are you there?

10 (On screen.)

11 A. Yes.

12 Q. Now, Mr. Jarashow, looking at the messages in this  
13 exhibit, in the first three messages, Ms. Masline was asking  
14 about where other airlines did not shorten the last-travel  
15 date of a footnote; right?

16 A. Correct.

17 Q. And for the Court's context, a fare with a last-travel  
18 date is only valid for travel through that particular date;  
19 right?

20 A. Yes, that's right.

21 Q. That type of date restriction is included in footnotes  
22 transmitted in ATPCO filings?

23 A. Correct.

24 Q. So a footnoted fare could be used to offer a low fare  
25 that's only valid for a limited travel window; right?

1 A. Correct. A fare with a footnote that has a travel  
2 period defined is only valid for travel during that time  
3 period.

4 Q. And shortening the last-travel date for a low fare can  
5 have the effect of raising prices after the new shorter  
6 last-travel date; right?

7 A. Well, it could. Whatever fare sells in its place after  
8 the last travel is no longer applicable.

9 Q. The low fare would no longer be valid after that  
10 last-travel date; right?

11 A. Correct.

12 Q. And looking at your 10:38 a.m. response to Ms. Masline,  
13 you were reporting that American had not shortened its  
14 last-travel date; right?

15 A. Correct.

16 Q. In other words, American was selling a particular fare  
17 for a longer travel period than JetBlue was selling its  
18 equivalent fare; right?

19 A. I believe that's about right.

20 Q. And later at 10:45 a.m. Ms. Masline reported that  
21 JetBlue had changed the last-travel date on one of its fares  
22 and JetBlue's change was not 100 percent matched by  
23 American; right?

24 A. That's the way I read what's on the page, yes.

25 Q. So just to sort of summarize that, Mr. Jarashow, if

1 American had not shortened its last-travel date, that means  
2 they had a fare that was available for a longer period of  
3 time than a comparable fare from JetBlue; right?

4 A. That's right.

5 Q. That could mean American was selling a lower fare than  
6 JetBlue on certain dates after that last-travel date?

7 A. I think that's about right.

8 Q. Now, at 10:40 a.m. Ms. Masline wrote, "But an  
9 add/cancel couldn't hurt." Do you see that?

10 A. I do.

11 Q. And as we discussed earlier, adding and canceling a  
12 fare can be used to flash a fare to highlight it to another  
13 airline; right?

14 A. It could. An add/cancel is a reference to a technical  
15 process in ATPCO where you're changing an attribute of a  
16 fare. It happens for a variety of reasons. Earlier, yes,  
17 we did discuss that could be a flash.

18 Q. And in this context you would agree that the reason to  
19 do an add/cancel was to encourage American to be aligned  
20 with JetBlue's last-travel date; right?

21 A. Well, I don't recall saying that we encouraged them. I  
22 think it was a matter of changing the travel period  
23 associated with the date -- associated with the fare, excuse  
24 me.

25 Q. And would you agree that doing an add/cancel would

1 highlight the discrepancy in fare dates for American?

2 MS. ZIEMINSKI: Objection.

3 THE COURT: No, overruled.

4 A. Well, a carrier would see, I assume, a change come  
5 through on the travel period. Again, I don't recall  
6 thinking of anything as highlighting or encouraging any type  
7 of response.

8 Q. And if American observed, in response to the  
9 add/cancel, the discrepancy in travel dates, that could lead  
10 American to shorten its last-travel date to match JetBlue;  
11 right?

12 A. Well, they would -- I believe they would change -- they  
13 would see a change come through and make a decision for  
14 themselves.

15 Q. And returning to your response to the judge's question  
16 earlier, you agree that this exhibit shows an example of  
17 flashing action by JetBlue that could send a signal to  
18 American?

19 A. No, I do not. I believe we were saying we did not take  
20 that action. We were saying the difference in travel dates  
21 was fine.

22 Q. And the action being discussed would potentially have  
23 highlighted that fare change to American; right?

24 A. I don't know that it would or wouldn't have. I think  
25 we were talking about, as I'm reading this, just changing

1 the travel period associated with our fare.

2 Q. Okay. Mr. Jarashow, let's take a step back from this  
3 particular example. While you've been at JetBlue, you've  
4 observed other airlines making filings on ATPCO that you  
5 have interpreted as an effort to signal another airline;  
6 right?

7 A. I believe I've testified in the past that I may have  
8 seen it, but I don't recall a specific instance of it.

9 Q. So your testimony is clear, sir, you recall generally  
10 seeing ATPCO fare filings that you interpreted as an effort  
11 by one airline to send a signal to another airline; right?

12 A. I believe that's probably happened. Again, I don't  
13 recall a specific instance of it though.

14 Q. Let's turn to a slightly different topic. You're  
15 familiar with the concept of a cross-market initiative;  
16 right?

17 A. Yes.

18 Q. And you observe that cross-market initiatives occur in  
19 the airline industry; right?

20 A. I believe that they have happened.

21 Q. There's a shorthand acronym, CMI, that's sometimes used  
22 to mean cross-market initiative; right?

23 A. I believe that's been used in the past.

24 Q. Would you please turn in your binder to a tab marked  
25 BVG? It should be the last tab in your small binder.

1 (On screen.)

2 Q. Mr. Jarashow, looking at the e-mail at the middle of  
3 the first page, that's an e-mail from JetBlue's executive  
4 vice president, Marty St. George, to you and others at  
5 JetBlue; right?

6 A. Yes, that looks right.

7 Q. And Mr. St. George was responding to market summaries  
8 that you circulated on behalf of the revenue management  
9 team; right?

10 A. I see that in the subject line. I don't have the  
11 attachment here, but I see that, what he has made reference  
12 to.

13 MR. BRIGGS: Your Honor, plaintiffs offer BVG into  
14 evidence as Exhibit 787.

15 THE COURT: No objection?

16 MS. ZIEMINSKI: We don't have an objection to the  
17 portion of the exhibit that counsel has been referencing.  
18 The top portion does not have a "from" line and so we just  
19 want to note that, for the record.

20 THE COURT: No objection to limit it like that?

21 MR. BRIGGS: No objection to limiting it to the  
22 e-mail from Mr. St. George as well as the second page of the  
23 exhibit.

24 THE COURT: All right. I think we have agreement.  
25 As limited, BVG is admitted, Exhibit 786 in evidence.

1 MR. BRIGGS: 787, your Honor.

2 THE COURT: 787, I'm sorry.

3 (Exhibit 787 received in evidence.)

4 MR. BRIGGS: And 787 can be published.

5 (On screen.)

6 Q. Now, Mr. Jarashow, I'd like to focus on point 7 in  
7 Mr. St. George's list of points. Mr. St. George was  
8 reacting to fare reductions JetBlue had filed in DCA/FLA  
9 meaning routes between Washington's Reagan airport and  
10 Florida; right?

11 A. I believe he had a question about it, is the way I read  
12 this.

13 Q. And just to be clear, DCA/FLA, you interpret that to be  
14 routes between Reagan National and Florida; right?

15 A. The Florida, yeah. That's right.

16 Q. Okay. And he makes a reference to "our fare  
17 reduction," suggesting JetBlue had reduced fares on those  
18 markets; right?

19 A. I see that's consistent with the way I interpret the  
20 question I see there.

21 Q. And looking at Mr. St. George's question, the  
22 second sentence, he asks, "Are they doing any CMIs?" You  
23 understood that to be a question about whether American did  
24 a cross-market initiative in response to JetBlue lowering  
25 fares between Washington, D.C. and Florida; right?

1 A. I don't recall thinking about it or giving it any  
2 attention at the time, so I'm not sure how I understood it  
3 then. As I'm reading it now, I believe he's making a  
4 reference to a CMI and just asking if that was happening.

5 THE COURT: What do you understand a CMI to be?

6 THE WITNESS: I understand it to be a reference --  
7 a shorthand reference or abbreviation for cross-market  
8 initiative.

9 THE COURT: And what is that, as you understand  
10 it?

11 THE WITNESS: A cross-market initiative would be a  
12 competitive pricing scenario where a carrier takes a fare  
13 from one market and extended it -- a fare gets extended by a  
14 different carrier into another market.

15 Q. And following up on that answer, Mr. Jarashow, if a  
16 fare is extended into a different market as part of a  
17 cross-market initiative, that could lead the airline that  
18 filed the fare originally to reconsider it in the first  
19 market; right?

20 A. I don't know how another carrier would interpret -- how  
21 they would interpret any change that comes through, make a  
22 decision for themselves.

23 Q. I'm not asking about other carriers' reactions in that  
24 question, Mr. Jarashow, I'm asking about JetBlue's reaction  
25 if a cross-market initiative were filed against JetBlue and



1 a fare that JetBlue had filed was expanded by another  
2 carrier into other markets. Are you with me?

3 A. I believe so.

4 Q. And that action, when JetBlue observed it, would pose a  
5 risk to JetBlue's revenue; right?

6 A. Well, any fare filed in a market would have revenue  
7 implications.

8 Q. And that action, that cross-market initiative, could  
9 lead JetBlue to reconsider its fare in the first market;  
10 right?

11 A. Well, any fare that's filed we would take a look at and  
12 make a decision independently about what makes sense for us.

13 Q. So returning to Mr. St. George's question, he was  
14 asking whether JetBlue's action to reduce fares between D.C.  
15 and Florida led American to file a cross-market initiative  
16 against JetBlue; correct?

17 A. That's the way I interpret his question now, yeah.

18 Q. Okay. You can set the exhibit aside.

19 Mr. Jarashow, staying on the topic of cross-market  
20 initiatives, I'd like to walk you through a series of events  
21 concerning JetBlue and American fares. Would you please  
22 turn in your binder to the tab marked Exhibit EV.

23 A. Again, still in the small binder?

24 Q. Still in the small binder.

25 A. Thank you.

(On screen.)

Q. Mr. Jarashow, Exhibit EV is an e-mail chain involving you and others at JetBlue concerning fare activity; right?

A. That's correct.

MR. BRIGGS: Your Honor, plaintiffs offer EV into evidence as Exhibit 788.

THE COURT: No objection to EV?

MS. ZIEMINSKI: No objection.

THE COURT: EV is admitted, Exhibit 788.

(Exhibit 788 received in evidence.)

Q. Looking at the participants in the e-mail thread, sir, I believe we saw Andrew Parker in an earlier exhibit. He was JetBlue's revenue management director at this time; right?

A. Yes, he was.

Q. And we also saw Marty St. George before. At this time he was executive vice president and chief commercial officer of JetBlue; right?

A. I believe that was still his title at the time, and that's what I see on the page.

Q. And the last participant, other than yourself, is Dave Clark. The Court is familiar with Mr. Clark from his testimony at this trial. He was vice president of sales and revenue management at the time of this e-mail; right?

A. I believe that's right.

1 Q. Now, the subject line is, "Re: TCON Tactical Activity  
2 Recap." "TCON" refers to transcontinental routes between  
3 the east and west coasts, such as Boston to Los Angeles;  
4 right?

5 A. Yes, it would.

6 Q. And the word "tactical" is used. A tactical fare is a  
7 temporary fare that's only valid for a limited or specific  
8 date range; right?

9 A. Limited selling period or travel period, yes.

10 Q. In your e-mail at the bottom of the first page of this  
11 exhibit you gave a summary of tactical walk-up fares that  
12 had been filed on transcontinental routes; right?

13 A. That looks right to me, yes.

14 Q. And looking at the first paragraph of your e-mail,  
15 which is near the bottom of the first page, one of the  
16 developments that you highlighted in this e-mail was a low  
17 American Airlines fare in the Boston-to-Los Angeles market;  
18 right?

19 A. I believe that's right, yes.

20 Q. Now, let's look at Mr. St. George's response in the  
21 middle of the page. He asked about where the team was  
22 seeing cross-market initiative activity; right?

23 A. That was his question, yes.

24 Q. Then Mr. Parker responded later that evening on  
25 February 21st and he suggested having an in-person or a

1 phone conversation about the cross-market initiatives;  
2 right?

3 A. He said we could talk about it over the phone.

4 Q. You can set the exhibit aside.

5 Would you turn in your binder to Exhibit FC, please.

6 And, Mr. Jarashow, Exhibit FC is an e-mail you sent  
7 attaching summaries of weekly competitive pricing activity;  
8 right?

9 (On screen.)

10 A. That looks right.

11 Q. And around this time these weekly pricing summaries  
12 were regularly prepared for and sent to Mr. Parker and  
13 Mr. Clark; right?

14 A. I believe they were recipients, yes.

15 MR. BRIGGS: Your Honor, plaintiffs offer FC into  
16 evidence as Exhibit 789.

17 THE COURT: No objection?

18 MS. ZIEMINSKI: No objection.

19 THE COURT: FC is admitted, 789 in evidence.

20 (Exhibit 789 received in evidence.)

21 MR. BRIGGS: And it can be published.

22 (On screen.)

23 Q. Would you please turn, Mr. Jarashow, to the page of the  
24 exhibit with the Bates number ending 997. And the heading  
25 is, "Week ending February 22nd, 2019."

1 A. 997, you said?

2 Q. 997.

3 A. Thank you. All right.

4 Q. And the week ending February 22nd, 2019, is the same  
5 week as the e-mail we just looked at involving  
6 Mr. St. George and yourself and Mr. Parker; right?

7 A. I don't recall the exact date in front of me, but I  
8 will accept that it's probably around the same time.

9 Q. You're welcome to look if you like. It was in EV in  
10 your binder.

11 A. All right. In the interest of time I'll accept it.

12 Q. Now, back on Exhibit FC, which is now in as  
13 Exhibit 789, I'd like to focus you on the fourth bullet  
14 point on the page that begins, "TCON markets remain active  
15 throughout the week." And, again, TCON markets are  
16 transcontinental markets; right?

17 A. That's right.

18 Q. Looking at the second sub-bullet underneath that which  
19 reads, "By the 2000 subs on Friday, OAP fares in Boston-Los  
20 Angeles remained low at \$139. AA did not follow OA neither  
21 to increase nor to cancel." The "2000 subs" is a reference  
22 to the ATPCO submission at 8:00 p.m. on that Friday; right?

23 A. Yes, that's right.

24 Q. And this bullet point conveys that during that week in  
25 February of 2019 American had maintained a low fare of \$139

1 in the Boston-to-Los Angeles market; right?

2 A. That looks correct.

3 Q. Boston and Los Angeles are both important cities for  
4 JetBlue; right?

5 A. They are. They're both focus cities for us.

6 Q. Now, let's look at the very next bullet on the page,  
7 beginning, "On Friday at the 1000 subs." That's a reference  
8 to the 10:00 a.m. ATPCO submission; right?

9 A. You're referring to the next bullet, I heard you say,  
10 right?

11 Q. It begins, "On Friday at the 1000 subs B6 filed."

12 A. Yes, thank you.

13 Q. This bullet conveys that JetBlue filed \$139 walk-up  
14 fares in five markets at 10:00 a.m. on that Friday; right?

15 A. That looks right.

16 Q. The amount of that fare in those five markets was \$139,  
17 which was the same amount as American's fare from Boston to  
18 Los Angeles; right?

19 A. That looks right.

20 Q. Would you please identify for the Court the markets  
21 where JetBlue filed this \$139 walk-up fare?

22 A. Sure. I see Boston to DCA; Boston Logan to Reagan,  
23 Washington Reagan; Boston to Dallas-Fort Worth; Fort  
24 Lauderdale to Philadelphia; Jacksonville to Washington; and  
25 Chicago to Fort Lauderdale.

1 Q. And none of those five markets is a transcontinental  
2 market, is it?

3 A. No, I don't believe they are.

4 Q. And fair to say that each of those markets is very  
5 different from the others?

6 A. There are some similarities between them. They're  
7 different routes. They're all routes that we serve.

8 Q. It's a mix of different geographies; right?

9 A. Yes, that's right.

10 Q. And a mix of typical customer profiles from business to  
11 leisure; right?

12 MS. ZIEMINSKI: Objection.

13 THE COURT: Do you know the answer from your work?

14 THE WITNESS: I'd be guessing.

15 THE COURT: You may not guess.

16 MR. BRIGGS: I'll move on.

17 Q. All five of these markets have involved hub markets,  
18 hub airports for American; right?

19 A. It looks like there's an airport on one end or the  
20 other that they might describe as a hub or an area of large  
21 operation. These are also routes that we serve.

22 Q. And those airports that are American hubs or large  
23 operations are DCA, being Washington Reagan, Dallas-Fort  
24 Worth, Philadelphia, and Chicago O'Hare; right?

25 A. Yes.

1 Q. Now, in other words, taking a step back, Mr. Jarashow,  
2 after American maintained a low walk-up fare between  
3 JetBlue's focus cities Boston to Los Angeles, JetBlue filed  
4 a fare of the same amount in five markets touching American  
5 hubs; right?

6 A. Again, routes that we serve. That looks about right  
7 though.

8 Q. You'd agree that that's a way of describing a  
9 cross-market initiative; right?

10 A. I think that's a reasonable statement in this case.

11 Q. Let's turn to the next exhibit, please. Would you turn  
12 in your binder to Exhibit FD? Mr. Jarashow, Exhibit FD is  
13 an e-mail that you were involved, a few weeks later than the  
14 last exhibit, also relating to fare filings; right?

15 A. Looks like from March of 2019.

16 MR. BRIGGS: Your Honor, plaintiffs offer FD into  
17 evidence as Exhibit 790.

18 THE COURT: No objection?

19 MS. ZIEMINSKI: No objection.

20 THE COURT: FD is admitted Exhibit 790.

21 (Exhibit 790 received in evidence.)

22 MR. BRIGGS: Now, your Honor, we've prepared a  
23 demonstrative which is Jarashow Demonstrative A. It's in  
24 the next tab in the binder after FD. And it organizes the  
25 messages in the exhibit in a way that we think will be



1 helpful to streamline the examination. We request  
2 permission to publish that demonstrative.

3 THE COURT: You may use it.

4 MR. BRIGGS: Thank you.

5 Q. Now, Mr. Jarashow, I'll ask you primarily about the  
6 demonstrative, but at any time if you'd like to go back to  
7 look at the original exhibit you're welcome to do so.

8 A. Thank you.

9 (On screen.)

10 Q. Now, I'd like to start by focusing on the first box of  
11 the demonstrative which is excerpts from an e-mail from  
12 Ms. Masline on March 13th, 2019. Do you see that?

13 A. I do.

14 Q. And looking at the table on the left, Ms. Masline was  
15 making a report about the lowest walk-up fares in certain  
16 transcontinental markets; right?

17 A. Yes, that's right.

18 Q. So the table shows that American Airlines, as of  
19 March 13th, in the Boston-to-Los Angeles market, had a \$139  
20 fare; correct?

21 A. Again, you're looking in the top left box?

22 Q. That's right, sir.

23 A. Yes, I see \$139 on several carriers. It looks like all  
24 these carriers have \$139.

25 Q. All of the carriers were matched, including American

1 and also including JetBlue; right?

2 A. And Alaska, Delta, United, yes.

3 Q. Okay. And you'd describe \$139 as a relatively low fare  
4 for transcontinental service between Boston and Los Angeles;  
5 right?

6 A. By historical standards I believe that would be right.

7 Q. Now, let's look at the table in Ms. Masline's e-mail  
8 which is on the right-hand side of box 1. This reports the  
9 lowest walk-up fare in six other markets; right?

10 A. Correct.

11 Q. And the first five of the markets in the table are the  
12 same five markets we were discussing earlier involving  
13 American hubs where JetBlue had filed a \$139 fare in the  
14 prior exhibit; right?

15 A. They look the same, yes.

16 Q. Okay. And there's one additional market in this table,  
17 Philadelphia/Phoenix; right?

18 A. I see that, yes.

19 Q. And those are both American hub airports; right?

20 A. I believe they are.

21 Q. And the table showed that in several of those markets  
22 JetBlue still had a \$139 walk-up fare and it was slightly  
23 different in a couple of the markets; right?

24 A. Yes, that looks right.

25 Q. Now, let's move ahead a few days, Mr. Jarashow. Will

1 you please look at box 2 of the demonstrative which is an  
2 excerpt from an e-mail that you sent on March 18th. And,  
3 again, this is a similar table showing the lowest walk-up  
4 fares filed in the same four transcontinental markets as of  
5 March 18th at 11:30 a.m.; right?

6 A. That's what I see on the page.

7 Q. And you would agree that JetBlue received the  
8 information here about other airline fares by the 10:00 a.m.  
9 ATPCO submission that day?

10 A. That looks about right to me.

11 Q. Okay. Now, this table shows that by that time,  
12 10:00 a.m. on the morning of March 18th, American had raised  
13 its walk-up fare from Boston to Los Angeles to \$279; right?

14 A. I see that, yes.

15 Q. Now, let's look at the box number 3 of the  
16 demonstrative, and this excerpt is an e-mail from Andrew  
17 Parker on March 18th at 11:31 a.m. This e-mail goes back to  
18 the six markets involving American Airlines hubs; right?

19 A. The markets look the same as the one we saw earlier.

20 Q. It conveys that the same fares were present in those  
21 same six markets as on March 13th; right?

22 A. Just examining it quickly that looks right.

23 Q. Okay. Now, turning to Mr. Irwin's message on  
24 March 18th, which is in box 5 of the demonstrative, he  
25 reported that JetBlue's fares in those six markets would be

1 canceled at 1:00 p.m.; right?

2 A. I'm sorry. Which box are you referring to, 4 or 5?

3 Q. Box 5, which is underneath the American hub markets.

4 A. Thank you. I was looking at the wrong box. He  
5 indicated that they have been canceled, which they'll  
6 distribute at 1:00 p.m.

7 Q. Okay. By the time Mr. Irwin sent that message, JetBlue  
8 was aware from its information on the 10:00 a.m. ATPCO  
9 submission that American had raised its fare in Boston to  
10 Los Angeles and other transcontinental markets; right?

11 A. That looks about right.

12 Q. And when you said a moment ago, we were talking about  
13 the message about canceled for 1:00 p.m., that means that  
14 the fares would be canceled on the 1:00 p.m. ATPCO  
15 submission that date; correct?

16 A. That's when those fares would be distributed, correct.

17 Q. In other words, after JetBlue had observed American  
18 raise its walk-up fare between JetBlue's focus cities Boston  
19 to Los Angeles, JetBlue raised its walk-up fares in the  
20 American hub markets; right?

21 A. Well, I don't know if the fare was raised, all I know  
22 is that these fares appear to have been canceled.

23 Q. Let's focus on box 4 of the demonstrative. Box  
24 4 excerpts Mr. Irwin's message to you and others at 12:15 on  
25 the same day; right?

1 A. That's what I see on the page.

2 Q. And Mr. Irwin wrote that he had spoken with you and  
3 Mr. Parker, and JetBlue had determined to raise its own fare  
4 in the transcontinental markets, including from -- including  
5 in Boston to Los Angeles to \$279; right?

6 A. That's the way I read it.

7 Q. Okay. And that \$279 fare corresponds to American's  
8 newer Boston-to-Los Angeles fare reflected in box 2; right?

9 A. That's -- that looks right.

10 Q. Now, let's review the circumstances we've been  
11 discussing, Mr. Jarashow. You would agree that American had  
12 filed a low fare in the Boston-Los Angeles market and  
13 several other transcontinental markets; right?

14 A. Yes, that's right.

15 Q. And JetBlue responded with low fares in several markets  
16 touching American hubs; right?

17 A. That's right, in addition to routes that we served that  
18 \$139 was present.

19 Q. And on March 18th American raised its fare in the  
20 transcontinental markets, including Boston to Los Angeles;  
21 right?

22 A. That looks accurate.

23 Q. And after JetBlue saw that, JetBlue removed its low  
24 fare in the American hub markets; right?

25 A. That looks right.

1 Q. That activity -- one other question also on March 18th  
2 as part of the recap. JetBlue also raised its fare in  
3 Boston to Los Angeles matching American's higher fare;  
4 right?

5 A. Where do you see that?

6 Q. This would have been box 4 again where it says that  
7 JetBlue had canceled fares below \$279 in Boston-Los Angeles.  
8 You'd agree that that matched American's \$279 fare in box  
9 2 in Boston to Los Angeles; right?

10 A. That looks about right.

11 Q. Okay. Now, the activity that we've been reviewing is  
12 consistent with a cross-market initiative; right?

13 A. As I said before, I believe that's right.

14 Q. You can set the exhibit and the demonstrative aside,  
15 sir.

16 Changing subjects, Mr. Jarashow, the Court has heard  
17 quite a bit of testimony during this trial about how  
18 airlines file fares and observe each other's fares. I have  
19 just a few questions on that topic. Part of your job on the  
20 pricing team at JetBlue is to try to understand what other  
21 airlines are doing when they file fares; right?

22 A. That's generally right. We observe changes and  
23 activity in the marketplace and try to make sense of it.

24 Q. And the primary tool JetBlue uses to evaluate changes  
25 in other airlines' fares in the marketplace is air price,

1 which is used to analyze ATPCO filings; right?

2 A. Yes. We have some other tools as well.

3 Q. Okay. And among those other tools, the team also looks  
4 at fares available on other airlines' websites; right?

5 A. Correct.

6 Q. Let's compare the amount of information available to  
7 JetBlue using those tools. The Court has heard, and you  
8 gave some of this testimony about the daily ATPCO  
9 submissions four times a day in domestic markets. Those  
10 fares are associated with fare basis codes; right?

11 A. Correct.

12 Q. And the same or similar fare basis codes can be filed  
13 in different markets; right?

14 A. Yes.

15 Q. You can use the ATPCO data and air price to determine  
16 if an airline has filed the same fare basis code in multiple  
17 markets on the same ATPCO submission; right?

18 A. Yes, that's right.

19 Q. Now, airlines can file fares on ATPCO in batches;  
20 correct?

21 A. Yeah. I would describe the hourly or the four-time  
22 daily and hourly transmissions as batches, yes.

23 Q. The transmissions also have particular batch numbers  
24 associated with them; right?

25 A. Distribution groups, yeah, that's right.

1 Q. And an airline can file multiple batches or  
2 distribution groups on the same ATPCO submission; right?

3 A. Yes.

4 Q. So an airline can group a set of fares that have a  
5 particular strategic purchase into a distinct batch; right?

6 A. I suppose we could.

7 Q. For example, an airline could file fares for a  
8 cross-market initiative in multiple markets together in a  
9 distinct batch; right?

10 A. I suppose that's right.

11 Q. And at JetBlue you can use the ATPCO data and air price  
12 to see the exact batch, staying on that question, that  
13 another airline filed a cross-market initiative in; right?

14 A. I suppose you could query the data that way.

15 Q. Mr. Jarashow, an airline can also file the same  
16 footnote on ATPCO for fares in multiple markets; right?

17 A. Yes.

18 Q. And with the ATPCO data and air price, you can identify  
19 all of the fares in all the markets where the airline has  
20 filed the same footnote; right?

21 A. Yes.

22 Q. And you can use that data about footnote filings to  
23 assess the strategic purpose of another airline's fare  
24 filing; right?

25 A. You have to make an inference. And, again, we try to



1 make sense of what we see happening, but ultimately it's our  
2 interpretation.

3 Q. Okay. And you make those sorts of interpretations just  
4 about every day in the pricing team; right?

5 A. We do our best, yeah.

6 Q. Would it be fair to say, Mr. Jarashow, that simply  
7 searching other airlines' websites to see what fares they're  
8 offering on the web doesn't allow you to probe airlines'  
9 fares in the same way as you can with ATPCO data and air  
10 price; right?

11 A. Well, they are -- those two tools are put together to  
12 form a holistic view, but they're looking at different  
13 things to help, again, form a holistic impression.

14 Q. And the level of information that you can access and  
15 process using ATPCO is richer in the ways we were  
16 discussing; right?

17 A. You can see underlying rules and attributes. I would  
18 also point out, though, that the data we get from our -- by  
19 looking at airline websites is richer in a different way  
20 because it tells you what's actually selling.

21 Q. Okay. Turning to my last topic, this will involve a  
22 bit of a change of gears too. It relates mostly to what the  
23 Court has heard described as the ULCC test.

24 A. All right.

25 Q. And, Mr. Jarashow, are you familiar with an exercise

1 JetBlue conducted called the ULCC test?

2 A. Yes.

3 Q. And that was an effort to evaluate JetBlue's strategy  
4 relative to ultra low-cost carriers including Spirit?

5 A. Yeah, that's generally correct. We were evaluating a  
6 series of options or pricing relative to ULCCs at the time.  
7 That's how I remember it.

8 Q. You worked on the pricing aspects of the ULCC test;  
9 right?

10 A. I helped to set up the initial framework and  
11 methodology for evaluating the pricing position.

12 Q. And that framework involved matching Spirit fares in  
13 markets where JetBlue and Spirit competed; right?

14 A. In some instances I believe it did.

15 Q. As part of the ULCC test, JetBlue evaluated risks to  
16 JetBlue if matching Spirit's fares; right?

17 A. I believe that was one of the considerations, yes.

18 Q. Let's take a look at some documents about that. Would  
19 you turn in your binder, still on the small binder, sir, to  
20 the tab marked Exhibit JD?

21 (On screen.)

22 Q. Mr. Jarashow, Exhibit JD is an e-mail you received with  
23 materials about the ULCC test in February 2020; right?

24 A. February 28th, 2020.

25 Q. And you contributed to portions of the attached

1 materials; right?

2 A. I may have contributed portions of it.

3 MR. BRIGGS: Your Honor, plaintiffs offer JD into  
4 evidence as Exhibit 791.

5 THE COURT: No objection?

6 MS. ZIEMINSKI: No objection.

7 THE COURT: It's JT, correct?

8 MR. BRIGGS: "D" as in Davis.

9 THE COURT: JD, excuse me. JD is admitted,  
10 Exhibit 791.

11 (Exhibit 791 received in evidence.)

12 Q. Now, Mr. Jarashow, would you please turn to the page  
13 with the Bates number ending 148, which is in the slide  
14 deck.

15 (On screen.)

16 Q. This is a slide titled, "Anticipating OA Response,  
17 Yield Risks." Do you see that?

18 A. I do.

19 Q. And the slide generally describes risks JetBlue  
20 anticipated about the ULCC test; right?

21 A. I think it was describing potential risks.

22 Q. Understood.

23 MR. BRIGGS: And if I didn't say so, this exhibit  
24 can be published.

25 Q. Now, looking at the first bullet underneath "Risks"

1 that begins, "An OA response is to be expected," OA response  
2 means the response of other airlines; right?

3 A. That's the way I interpret it, yes.

4 Q. And JetBlue interpreted that when you lowered fares to  
5 match Spirit's fares in particular markets, other airlines  
6 in those markets would match those lower fares; right?

7 A. I believe we were discussing it as a potential outcome.  
8 As new fares are introduced into routes, I don't know what's  
9 going to happen after you file them.

10 Q. Looking at the next bullet point beginning, "Some of  
11 these fares," it reads, "Some of these fares will touch OA  
12 hubs, example, Atlanta, Philadelphia, Boston, while others  
13 will compete with OA connecting markets, both of which they  
14 have shown propensity to defend." "OA hubs" means the hub  
15 airports of legacy carriers; right?

16 A. That's the way I read it.

17 Q. And "OA connecting markets" would be markets that  
18 legacy carriers serve through their hubs?

19 A. It could be. I just read it as not nonstop routes.

20 Q. Now, the phrase "propensity to defend" at the end of  
21 the bullet reflects that the legacy airlines have a practice  
22 of taking actions to defend their markets; right?

23 A. I'm not sure how to interpret that. I think this is a  
24 question that just sort of says once fares are introduced  
25 you don't know what's going to happen next. I don't know

1 what's to interpret or defend.

2 Q. This is about OAs having a propensity to defend,  
3 meaning in the past; right?

4 A. That's what I -- how I read it.

5 Q. And so however you read it, this has to refer to legacy  
6 airlines taking actions, having a propensity to take actions  
7 to defend their markets; right?

8 MS. ZIEMINSKI: Objection. Asked and answered.

9 THE COURT: Well, it is, and I receive the  
10 evidence, and its plain meaning is that legacies take steps  
11 to defend their prices in those markets. So I'll sustain  
12 it. I've got that point.

13 MR. BRIGGS: I'll move on, your Honor.

14 Q. Mr. Jarashow, you would agree that JetBlue anticipated  
15 that when it matched Spirit's fares in some markets legacy  
16 airlines might respond by filing lower fares in additional  
17 markets; right?

18 A. I don't remember anticipating that that would happen.  
19 I remember discussing it as a potential risk.

20 Q. And that risk is the risk described in the bullet point  
21 that begins, "Expansion of these fares to additional  
22 markets." Right?

23 A. That's the way I understand it.

24 Q. Okay. And expansion of Spirit-matching fares to  
25 additional markets posed a risk to JetBlue's revenue; right?

1 A. I believe it could have.

2 Q. And if a fare spread to additional markets, that could  
3 cause JetBlue to reconsider its fare in the original markets  
4 where it was filed; right?

5 A. I don't know that we would reconsider it in the  
6 original routes. We were, again, evaluating a test that we  
7 were looking to understand. I think we just highlighted it  
8 as a potential risk that the fare could move into different  
9 routes elsewhere.

10 Q. And if that risk emerged, there's a potential that it  
11 would lead JetBlue to reconsider the ULCC test strategy of  
12 matching Spirit fares; right?

13 A. That seems very hypothetical. I don't know that we  
14 would have reconsidered it. Again, we were evaluating a  
15 test, and I think we wanted to understand what would happen.

16 Q. Okay. Would you turn, please, in the larger binder to  
17 the tab market CID? I think it's CID Individual. It should  
18 be the fourth tab in that binder.

19 A. CID Individual?

20 Q. That's right.

21 A. Thank you.

22 Q. And do you recognize that as the transcript of the  
23 deposition that you gave during the investigation of this  
24 transaction?

25 A. From February of this year, that looks right.

1 Q. Okay. Would you turn to page 294? And before I ask  
2 you about what's on the page, you recall being asked about  
3 this slide at your deposition in February of this year;  
4 right?

5 A. There were a lot of questions. I do see it on the page  
6 though.

7 Q. Okay. And you see from lines 8 through 12 you were  
8 asked: "If a fare spreads to additional markets, would that  
9 cause JetBlue to reconsider its fare in the original market  
10 where it was filed?"

11 And you answered: "Possibly."

12 A. That's what I see there.

13 Q. And was that testimony accurate when you gave it?

14 A. I believe it was.

15 MS. ZIEMINSKI: Your Honor, I object. That's not  
16 a proper impeachment.

17 THE COURT: It may stand.

18 Q. Mr. Jarashow -- and you can set the transcript aside.

19 We spoke earlier about cross-market initiatives.

20 Cross-market initiatives can involve fares being expanded to  
21 other markets as a competitive response; right?

22 A. It could.

23 Q. And so what's -- the slide we've been looking at, Bates  
24 number ending 138, reflects, in part, that JetBlue was  
25 concerned about other airlines filing cross-market

1 initiatives against it in response to the ULCC test; right?

2 A. Again, we were -- how I read this is we were concerned,  
3 wanted to highlight the risk that fares could be spread into  
4 additional markets.

5 Q. You can set the exhibit aside.

6 Let's speak for a couple of minutes about Spirit's  
7 response to JetBlue's matching fares. Would you turn in  
8 your binder, please, to the tab marked Exhibit OQ?

9 THE COURT: Now, which binder are we in?

10 MR. BRIGGS: I'm sorry, sir, your Honor, it's the  
11 small binder.

12 (On screen.)

13 Q. Mr. Jarashow, Exhibit OQ is an e-mail that Lucas  
14 Osołkowski sent to you and others at JetBlue on March 3rd,  
15 2020; right?

16 A. That's correct.

17 Q. And Mr. Osołkowski at the time was an inventory analyst  
18 at JetBlue; right?

19 A. That's right.

20 Q. That's within the revenue management department?

21 A. Correct.

22 MR. BRIGGS: Your Honor, plaintiffs offer OQ into  
23 evidence as Exhibit 792.

24 THE COURT: No objection?

25 MS. ZIEMINSKI: No objection.



1 THE COURT: OQ is admitted, Exhibit 792.

2 (Exhibit 792 received in evidence.)

3 MR. BRIGGS: And there are, on a few pages,  
4 redactions to which we haven't objected but I won't go  
5 anywhere near those pages.

6 So OQ may be published.

7 (On screen.)

8 Q. Mr. Jarashow, let's look at the e-mail that  
9 Mr. Osolkowski sent on the first page of the exhibit. I'd  
10 like to start with the paragraph beginning, "Hypothesis."  
11 Do you see that he stated an observation that Spirit's  
12 strategy was to always have a lower price point than both  
13 legacy and low-cost carriers?

14 A. Yes, I see that's what he stated.

15 Q. And in the following paragraph, beginning, "As part of  
16 the initial ULCC test on January 24th," now, that reflects  
17 that JetBlue had begun the ULCC test by January 24th, 2020;  
18 right?

19 A. That looks right. That's the way I read it.

20 Q. And January 24th, 2020, was before the COVID pandemic;  
21 right?

22 A. Well, I believe it was at that point beginning to be a  
23 concern, certainly something we were aware of at the time.

24 Q. It was certainly before the major panic began with the  
25 COVID pandemic; right?

1 A. Again, there was increasing concern about it.

2 Q. Understood. Now, in this paragraph Mr. Osolkowski is  
3 reporting that JetBlue had matched Spirit's lowest fares in  
4 two markets; right?

5 A. I'm sorry. Which e-mail are you referring to?

6 Q. I'm on the paragraph underneath "Hypothesis" from  
7 Mr. Osolkowski.

8 A. Thank you.

9 Q. Still on the, "As part of the initial ULCC test."

10 A. Thank you.

11 Q. So he was reporting JetBlue matched Spirit's lowest  
12 fares in two particular markets; right?

13 A. Correct.

14 Q. And he also reported that Spirit had responded to  
15 JetBlue's matching fares in those markets by lowering its  
16 own fares even lower in that market; right?

17 A. That's what he stated.

18 Q. Okay. And you have no reason to doubt that that's  
19 accurate, do you?

20 A. I have no reason not to believe it.

21 Q. I'd like to stay on this same exhibit, Mr. Jarashow,  
22 but turning to an earlier period of time and turning to the  
23 attachment to the e-mail which begins on page ending 445.  
24 This is the slide deck attachment.

25 THE COURT: Say again the -- where are we?

1 MR. BRIGGS: Page 445, your Honor.

2 Q. And this is a set of materials titled, "Strategy  
3 Outline for Spirit-Impacted Florida-Latin Markets." Do you  
4 see that?

5 A. I do.

6 Q. And Mr. Osolkowski had prepared these materials in  
7 May 2019; right?

8 A. That's the date that I see there.

9 Q. And that was before the ULCC test; right?

10 A. Thinking about the timeline, that sounds right.

11 Q. As the title reflected, JetBlue has been impacted by  
12 Spirit in routes between Florida and Latin America by 2019;  
13 right?

14 A. That seems about right.

15 Q. And JetBlue was considering what strategies to take in  
16 response to that impact?

17 A. I think that's right.

18 Q. Okay. Would you turn to the page ending 447 of this  
19 exhibit, slide 3? The title is "Background."

20 A. Thank you.

21 Q. And, Mr. Jarashow, the background slide includes  
22 several charts depicting the growth of Spirit as a  
23 competitor in JetBlue's Florida-Latin America routes in the  
24 years leading up to 2019; right?

25 A. That looks right.

1 Q. Okay. You can set the exhibit aside.

2 Mr. Jarashow, returning briefly to the subject of the  
3 ULCC test, would you please turn in your binder to the tab  
4 marked as Exhibit 395. It should be the first tab in the  
5 small binder.

6 MR. BRIGGS: And, your Honor, Exhibit 395 is in  
7 evidence and can be published.

8 (On screen.)

9 Q. Mr. Jarashow, Exhibit 395 is an e-mail with the  
10 presentation about the ULCC test from March 2020; right?

11 A. March 25th, 2020, that's what I see.

12 Q. And you contributed to portions of the attached  
13 presentation; right?

14 A. I may have. I don't recall preparing it, but there may  
15 have been items to which I contributed.

16 Q. Let's turn to the page of the presentation with the  
17 Bates number ending 633, and the title is, "Anticipated  
18 Risks: A retrospective."

19 (On screen.)

20 Q. I'd like to focus on the fourth line on the page which  
21 begins, "Legacy carriers have generally matched the fares  
22 filed by B6." That was a reference to markets where JetBlue  
23 had matched Spirit's fares and JetBlue also competed in  
24 those markets with a legacy airline; right?

25 A. Could you repeat the question? I just want to make

1 sure I heard it. I apologize.

2 Q. Sure. Let me rephrase it slightly to make it a little  
3 easier. The markets being discussed in this bullet point  
4 would involve markets where JetBlue competes against both  
5 Spirit and legacy carriers; right?

6 A. That seems like a reasonable inference.

7 Q. And what this bullet point was referring to is that in  
8 those markets where JetBlue competes with both Spirit and a  
9 legacy carrier, the legacy carrier generally filed a fare  
10 that matched JetBlue's fare that, in turn, matched Spirit's  
11 fare; right?

12 A. That looks right. In the next bullet though I see also  
13 that they've applied a premium in certain cases.

14 Q. Now, later on the page do you see the bullet that  
15 reads, "Spirit has dropped fares even lower since we began  
16 matching"?

17 A. I see that bullet.

18 Q. And that reflects that after JetBlue had matched  
19 Spirit's fares in overlapping markets, Spirit then filed  
20 even lower fares in those same markets; right?

21 A. This seems consistent with the timeline.

22 Q. And that's consistent with what we saw in  
23 Mr. Osolkowski's e-mail as well; right?

24 A. It's consistent with the statement that he made.

25 Q. Okay. You can set that exhibit aside, sir.

1 MR. BRIGGS: I'll pass the witness.

2 THE COURT: Ms. Zieminski, you may proceed.

3 MS. ZIEMINSKI: Thank you, your Honor. One  
4 moment.

5 CROSS-EXAMINATION

6 BY MS. ZIEMINSKI:

7 Q. Mr. Jarashow, how long have you been working in  
8 JetBlue's pricing department?

9 A. I've been in the pricing group for about five years.

10 Q. Would you explain to the Court why you file fares on  
11 ATPCO?

12 A. Sure. ATPCO is sort of the clearinghouse for getting  
13 our fares and rules, rule data sort of set up and  
14 distributed out into the world to places where customers can  
15 buy our tickets.

16 Q. Could you explain some of the places that the ATP data  
17 goes out in the world?

18 A. Sure. It might be, like, travel agencies, you know,  
19 traditional travel agency that you might stop into to buy a  
20 ticket, an online travel agency, and the reservation system  
21 that drives our own website.

22 Q. And so the fare information that you put into ATPCO is  
23 then distributed from ATPCO to all the places that you just  
24 mentioned so that customers can book tickets; is that right?

25 A. Yeah, that's about right.

1 Q. You were asked some questions today about flashing  
2 other airlines. Do you remember those?

3 A. Yes.

4 Q. In your five years of experience in the JetBlue pricing  
5 team, how many routes on a daily basis is the JetBlue  
6 pricing team responsible for pricing?

7 A. Well, we have about 200 or so nonstop routes, and all  
8 the connections in between them. Quite a few.

9 Q. At any given time how many fares does JetBlue have  
10 filed on ATPCO?

11 A. It would be well over a million. I'd say probably  
12 between 1- and 3 million.

13 Q. And how often can those fares change?

14 A. International fares can change hourly and, as we said  
15 earlier, domestic fares can change up to four times a day.

16 Q. In practice, how many times are your -- is your team  
17 changing fares per day?

18 A. Well, some days are busier than others. Some days can  
19 be relatively quiet where only a few hundred fares may  
20 change. Other days might be very busy with tens of  
21 thousands. On average, I'd say thousands.

22 Q. And over the five years that you've been on the pricing  
23 team, how many fare changes has JetBlue filed or changed?

24 A. Tens of millions, I'd say.

25 Q. Mr. Briggs showed you Exhibit 785. Do you remember

1 that exhibit?

2 A. Yes, I do.

3 Q. It was an e-mail where Ms. Yanez made reference to  
4 flashing?

5 A. Yes.

6 Q. Do you remember when that e-mail was dated?

7 A. It would have been in February of 2020.

8 Q. Other than that isolated instance of flashing, do you  
9 recall any other discussions of flashing during your time at  
10 JetBlue?

11 A. No, I do not.

12 Q. Mr. Briggs also asked you some questions about the  
13 purpose of an add/cancel. Do you remember those?

14 A. Yes.

15 Q. Could you explain what an add/cancel is?

16 A. Sure. Add/cancel is a shorthand reference for the  
17 technical process that happens several times a day for a  
18 variety of reasons where a fare has to be canceled, an  
19 attribute of it is changed, and then it's refiled.

20 Q. Could you give a specific example of why you might need  
21 to file an add/cancel to change a fare?

22 A. Sure. If you wanted to change the travel dates on a  
23 fare.

24 Q. Does add/cancel necessarily mean that you're signaling  
25 another airline?



1 A. No.

2 Q. Is signaling another airline permitted at JetBlue?

3 A. No.

4 Q. Have you ever trained anyone on how to flash another  
5 airline?

6 A. No.

7 Q. Have you ever been trained on how to flash another  
8 airline?

9 A. No.

10 Q. Do you follow the instructions not to flash other  
11 airlines?

12 A. We do.

13 Q. Also I want to turn to cross-market initiatives which  
14 you heard some questions about. Similarly, are cross-market  
15 initiatives part of JetBlue's practices?

16 A. No, that's not part of our practices.

17 Q. Other than the activity that you spoke to Mr. Briggs  
18 about in early 2019, do you recall any other instances of  
19 JetBlue pricing analysts engaging in any cross-market  
20 initiatives?

21 A. No, I do not.

22 Q. Do you recall any instances of engaging in cross-market  
23 initiatives in 2020?

24 A. No, I do not.

25 Q. What about in 2021?

1 A. No, I do not.

2 Q. How about last year, in 2022?

3 A. No.

4 Q. Has it happened this year in 2023?

5 A. No.

6 Q. Have you ever been trained on how to initiate a  
7 cross-market initiative?

8 A. No.

9 Q. Have you ever trained anyone else on how to do that?

10 A. No.

11 Q. Let's turn to the ULCC test. Mr. Briggs asked you some  
12 questions about that test. Do you remember those?

13 A. Yes.

14 Q. What was your involvement with the ULCC test?

15 A. Well, as I mentioned earlier, I was involved with  
16 helping to set up the initial framework and methodology for  
17 evaluating a series of our prices relative to some ultra  
18 low-cost -- some ULCCs on a handful of routes.

19 Q. When did you start setting that up?

20 A. The discussions began late 2019.

21 Q. And when did the test begin?

22 A. Early 2020, I believe in January.

23 Q. And how long did the test go on?

24 A. Approximately six months. So I believe it ended  
25 somewhere in the middle of that summer, 2020.

1 Q. Okay. And Mr. Briggs made mention of the COVID-19  
2 pandemic. Was that also happening at the same time as this  
3 test was just getting off the ground?

4 A. Yes, it was.

5 Q. Exhibit 791 was dated February 28, 2020. That was the  
6 PowerPoint that discussed anticipated risks; right?

7 A. I believe that's right.

8 Q. And Exhibit 793 was dated March 25th, 2020, about a  
9 month later; right?

10 A. I believe that's right.

11 Q. And it took into account some of the analysis that the  
12 group did in that intervening month; right?

13 A. I believe that's right.

14 Q. How reliable was the data that came in during the month  
15 between January 28th, 2020 and March 25th, 2020?

16 A. Well, the COVID pandemic introduced a lot of  
17 confounding factors, a lot of external factors. I would say  
18 it made it unreliable, iffy.

19 Q. What about the test overall? Were you able to, later  
20 in the year 2020, draw any reliable conclusions from the  
21 data that you got earlier that year?

22 A. Not really, no.

23 Q. What changes did JetBlue make to its pricing strategy  
24 as a result of the ULCC test?

25 A. None really.

1 Q. Is the ULCC test still in place today?

2 A. No.

3 MS. ZIEMINSKI: Pass the witness, your Honor.

4 THE COURT: Anything further, Mr. Briggs?

5 MR. BRIGGS: A few questions. It won't take very  
6 long, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BRIGGS:

9 Q. Mr. Jarashow, counsel asked a number of questions about  
10 the number of fares that JetBlue files in ATPCO; right?

11 A. Correct.

12 Q. And we looked at Exhibit 785, which is an example of  
13 JetBlue engaging in fare flashing using ATPCO; right?

14 A. 785. Could you remind me?

15 Q. Sure. That is JT.

16 A. Okay.

17 Q. And we don't need to go over it again, I'm just asking  
18 if that, to your recollection, was an example of fare  
19 flashing using ATPCO?

20 A. Correct. That's not the way I interpreted it at the  
21 time, but yes.

22 Q. And we looked at another example on Exhibit 786, which  
23 is FB, of yourself and Ms. Masline discussing an add/cancel  
24 that would highlight a fare change to American; right?

25 A. I believe the discussion was around an add/cancel

1 around travel dates.

2 Q. It concerns aligning the travel dates with American;  
3 right?

4 A. I believe it was, again, just about the travel period  
5 associated with the fare. I think there was some  
6 differences between what the travel dates were.

7 Q. And you don't know how often JetBlue has engaged in  
8 fare flashing; right?

9 A. I'm not aware of any instances beyond what we've  
10 discussed.

11 Q. And you're not aware of how often other airlines have  
12 engaged in fare flashing; right?

13 A. No.

14 Q. And we spoke about a cross-market initiative on direct  
15 and your counsel asked you a couple of follow-up questions  
16 about that. Just to be clear, Mr. Jarashow, you testified  
17 earlier that your understanding is that cross-market  
18 initiatives do occur in the airline industry; right?

19 A. I believe that they have happened.

20 Q. And we looked at JetBlue examples of that from 2019;  
21 right?

22 A. I believe there was an example of it from 2019.

23 Q. Okay. Mr. Jarashow, counsel asked you about JetBlue's  
24 practices in the last two or three years, if I remember  
25 correctly. And taking a step back, this is actually the

1 sixth time that you've testified in a matter involving the  
2 DOJ in the last two and a half years, either at depositions  
3 or trial; right?

4 A. That number sounds right, six.

5 Q. And those depositions and testimony have involved the  
6 Northeast Alliance and now this proposed merger; right?

7 A. Correct.

8 Q. The first of that deposition was -- the first of your  
9 depositions was in March 2021; right?

10 MS. ZIEMINSKI: Objection, your Honor. This is  
11 outside the scope of my cross-examination.

12 THE COURT: It is. Sustained.

13 Q. Based on your experience, Mr. Jarashow, you've been  
14 aware for the last few years, at least, that your  
15 communications can be produced in antitrust litigation;  
16 right?

17 A. Yes.

18 MS. ZIEMINSKI: Objection. Same objection.

19 THE COURT: Overruled.

20 Q. And you've seen, Mr. Jarashow, through your depositions  
21 and testimony, that JetBlue's internal communications can be  
22 used as evidence in trial; right?

23 A. Yes.

24 Q. And that experience has made you cautious about what  
25 you put in writing; right?

1 A. I don't know that -- cautious but careful, and  
2 certainly conscious of what I put in writing, but also what  
3 we discuss.

4 Q. Are you careful not to use the phrase "cross-market  
5 initiatives" in writing?

6 MS. ZIEMINSKI: Objection. Outside the scope.

7 THE COURT: No, it isn't. You may ask the  
8 question.

9 Q. Are you cautious not to use the phrase "cross-market  
10 initiatives" in writing?

11 A. Well, or in discussions.

12 Q. Are you cautious not to use the phrase "flashing" in  
13 writing?

14 A. Well, it's not something that we discuss or write  
15 about. We don't do them. It's not our practice.

16 Q. Your counsel asked you a few questions about the ULCC  
17 test, and you testified that some of the data available to  
18 JetBlue during the ULCC test was perhaps less than totally  
19 reliable; right?

20 A. Yes.

21 Q. The data that we looked at in a couple of the exhibits  
22 on direct concerning Spirit's responses to JetBlue's fares,  
23 there's no indication that those data were unreliable;  
24 right?

25 A. I believe you're referring to the fares that they had

1 filed and were selling at the time. I think those are  
2 straightforward.

3 Q. They're accurate?

4 A. They represent, I believe, what he -- what  
5 Mr. Osolkowski was seeing at the time.

6 Q. And there was no suggestion in Mr. Osolkowski's e-mail  
7 or the March 20 deck that there was any inability to  
8 interpret what JetBlue was seeing in the marketplace at that  
9 time; right?

10 A. Are you referring to the fares that we were selling?

11 Q. Yes.

12 A. I believe that would be accurate.

13 Q. Mr. Jarashow, is it your testimony that JetBlue stopped  
14 implementing specific strategies relative to Spirit after  
15 the ULCC test in 2020?

16 A. I believe the test ended right around that time.

17 Q. But the question, Mr. Jarashow, was whether at the end  
18 of the test JetBlue stopped implementing specific strategies  
19 to respond to Spirit?

20 A. I believe there was some --

21 MS. ZIEMINSKI: Objection. That mischaracterizes  
22 the question.

23 THE COURT: We'll see what his answer is. I  
24 understand what his testimony is.

25 And you may answer.



1 A. The test expired in the middle of 2020. I believe  
2 there was some flavor of some form of benchmarking, but not  
3 really active, loosely referencing ULCC fares for some  
4 period of time after that.

5 THE COURT: What do you mean when you answer?

6 THE WITNESS: As I recall, we had some form of  
7 benchmark, or matching Spirit fares, but with premiums, or  
8 perhaps not all times a day, not all days a week, or  
9 seasonally. But some rough form of it for a period of time.

10 THE COURT: After the end of the ULCC test?

11 THE WITNESS: Correct.

12 THE COURT: Thank you.

13 Q. And JetBlue never made a specific decision to stop  
14 benchmarking Spirit's fares, did it?

15 A. Well, as a general matter of practice we don't  
16 benchmark versus Spirit's fares. At some points in time in  
17 certain situations we've used them as a reference point.

18 Q. And that goes on to this day; right, sir?

19 A. Not really, no.

20 Q. At times JetBlue will file lower tactical fares that  
21 are approaching Spirit's fares; right?

22 A. We may from time to time in certain situations. Again,  
23 as a matter of practice we don't benchmark for Spirit.

24 MR. BRIGGS: That's all I have, your Honor.

25 THE COURT: Nothing further?

1 MS. ZIEMINSKI: No, your Honor.

2 THE COURT: You may step down. Thank you.

3 (Whereupon the witness stepped down.)

4 THE COURT: And you may call your next witness.

5 MR. DUFFY: Yes, your Honor. We'll be calling  
6 Mr. Lage from Spirit.

7 THE COURT: He may be called.

8 LEONARDO LAGE, sworn

9 THE COURT: Mr. Doidge?

10 MR. DOIDGE: Good morning, your Honor.

11 DIRECT EXAMINATION

12 BY MR. DOIDGE:

13 Q. Good morning, Mr. Lage.

14 A. Good morning, counsel.

15 MR. DOIDGE: Just to remind you, your Honor,  
16 Mr. Lage is an adverse-party witness.

17 Q. Mr. Lage, we have provided you with a binder and we'll  
18 likely to be referring to it during your examination and  
19 I'll let you know. You don't need to look at it right now.  
20 We'll let you know when you need to turn to it.

21 Could you please state and spell your name, for the  
22 record?

23 A. My name is Leonardo Lage, L-E-O-N-A-R-D-O, last name  
24 Lage, L-A-G-E.

25 Q. Mr. Lage, you are a senior pricing manager for Spirit;

1 right?

2 A. That's correct.

3 Q. You've held that position since joining Spirit in 2017;  
4 correct?

5 A. Yes.

6 Q. In your position as senior pricing manager your main  
7 responsibility is to evaluate pricing activity by Spirit's  
8 competitors; right?

9 A. I monitor the activity. I'm not sure that I evaluate  
10 the activity, but I report on activities of other airlines.

11 Q. Well, Mr. Lage, your monitoring involves looking at  
12 pricing activity related to fares and footnote changes that  
13 could have an impact in origin and destination markets that  
14 Spirit serves; right?

15 A. That would be correct.

16 Q. And one of the things that you're attempting to do is  
17 to get a better understanding of what competitors are doing;  
18 right?

19 A. That's correct. Monitor filings and fares, rules and  
20 footnotes so I can get trends and information on our  
21 competitors.

22 Q. And part of doing that job involves trying to interpret  
23 and understand what other airlines' fare actions are; right?

24 A. To an extent, yes. That's correct.

25 Q. So, Mr. Lage, you began your career at Northwest

1 Airlines in the 1980s; right?

2 A. I began my career with Northwest Airlines in 1978.

3 Q. And fair to say, Mr. Lage, that you have worked for  
4 many years in airline pricing?

5 A. A good part of those years. I would say not many, but  
6 I've had experience about nine, twelve years of experience  
7 in pricing.

8 Q. Mr. Lage, you worked in pricing at Northwest Airlines;  
9 right?

10 A. Yes, I did.

11 Q. And you worked at AirTran Airlines on pricing; right?

12 A. Correct.

13 Q. And you worked on pricing at Southwest Airlines; right?

14 A. Correct.

15 Q. And you've worked at Spirit Airlines for roughly six  
16 years now in the pricing department; right?

17 A. Correct.

18 Q. And while you were at -- well, let me step back. You  
19 actually worked for Spirit's chief commercial officer for a  
20 number of years even before you came to Spirit; correct?

21 A. If you're referring to Matt Klein?

22 Q. Mr. Klein, yes.

23 A. Yes. I worked with Matt Klein at AirTran Airways.

24 Q. In fact, with Mr. Klein was the head of the pricing and  
25 revenue management department at AirTran when you were the

1 pricing manager at AirTran; right?

2 A. That would be correct.

3 Q. In that position you reported directly to Mr. Klein;  
4 correct?

5 A. Yes, I did.

6 Q. And you participated in meetings with senior executives  
7 that Mr. Klein reported to; right?

8 A. At times I did participate in some meetings.

9 Q. And then in 2017 you again joined Mr. Klein just a few  
10 months after he had joined Spirit; correct?

11 A. Yes. I joined in 2017. I'm not quite clear exactly  
12 what date Matt Klein joined Spirit Airlines.

13 Q. You recall that he was at Spirit when you joined;  
14 right?

15 A. That would be correct.

16 Q. Does it sound about right that Mr. Klein joined Spirit  
17 in roughly August of 2016?

18 MR. NAGLEY: Objection, your Honor. The witness  
19 has just said he doesn't know.

20 THE COURT: Well, he's trying to refresh his  
21 recollection.

22 A. I really have no recollection exactly what month and  
23 date he started working for Spirit Airlines. I can't a  
24 hundred percent be sure about that, answering that question.

25 THE COURT: That's his testimony.

1 MR. DOIDGE: I'll move on.

2 Q. Mr. Lage, based on your many years of experience, it's  
3 fair to say you're very familiar with how airline pricing  
4 works; right?

5 A. I'm familiar with airline pricing, yes, of course.

6 Q. So, Mr. Lage, I want to focus on what you do to monitor  
7 and understand other airlines' fare actions. Now, you have  
8 pricing analysts that report directly to you; right?

9 A. I currently have one pricing analyst that reports to  
10 me.

11 Q. And prior to that time you had two at various points in  
12 time; right?

13 A. That's correct.

14 Q. And when you were at AirTran, how many analysts did you  
15 have reporting to you?

16 A. I had two, at times three.

17 Q. Mr. Lage, the Court has already heard about ATPCO and  
18 its weekly -- and its multiple transmissions each day. Fair  
19 to say that one of the responsibilities of the analysts that  
20 report to you are to review the fare changes filed by those  
21 other airlines at every one of those ATPCO transmissions?

22 A. That's correct. We try to review every single ATPCO  
23 transmission that's reported.

24 Q. And those analysts also review any changes to footnotes  
25 that are transmitted through ATPCO by the other airlines;

1 right?

2 A. That's one of their responsibilities, yes.

3 Q. And after each ATPCO transmission they provide you with  
4 a summary of what they've observed; right?

5 A. That's correct.

6 Q. And over the course of the day you may also have  
7 conversations with them regarding what they've observed;  
8 right?

9 A. We constantly have conversations during the course of  
10 business about airline pricing and our responsibilities.  
11 That's correct.

12 Q. And you also may communicate with them via chat or  
13 text; right?

14 A. We do at times, yes.

15 Q. And, Mr. Lage, at the end of each day you prepare a  
16 report called the pricing activity report; right?

17 A. Yes.

18 Q. And that report provides a summary of the observation  
19 of other airline fare activity that's been observed over the  
20 course of the day; right?

21 A. That's correct. So the report summarizes what I  
22 consider high-level activity within our network that might  
23 impact our specific markets, and that information may relate  
24 to various fares, rules and footnote changes.

25 Q. And you provide that report to the entire pricing and

1 revenue management team at Spirit; right?

2 A. The -- I don't know about the entire. I include the  
3 revenue management team and pricing team, as well as other  
4 members of the organization.

5 Q. You also provide the report to the chief commercial  
6 officer, Mr. Klein; right?

7 A. Yes, I do.

8 Q. And you're providing that information about the fare  
9 activity of other airlines to help Spirit make decisions  
10 about the prices it should set in its markets; right?

11 A. I'm basically providing tactical information for them  
12 to be able to make whatever decisions regarding our network,  
13 regarding pricing in our network, yes.

14 Q. And, Mr. Lage, it's fair to say that Mr. Klein will, at  
15 times, have questions for you about the airline -- the fare  
16 activity of other airlines that you've observed; right?

17 A. Yes. At times I get questions or feedback from any  
18 member of the distribution group where I send that report  
19 to.

20 Q. And fair to say you often directly engage with  
21 Mr. Klein in responding to his questions; right?

22 A. I wouldn't characterize it as often. There are times  
23 when Mr. Klein will ask me a question or ask me to clarify  
24 something in my report, yes.

25 Q. Well, and in addition to the pricing activity report,



1 Mr. Lage, you also send information through other means to  
2 Mr. Klein about other airline fare activity; right?

3 A. Right. So we use various means of communications:  
4 e-mail, reports, or just conversations at times. It's the  
5 normal course of business.

6 Q. And also sometimes you'll have a chat or text message  
7 with Mr. Klein; right?

8 A. Yes, at times.

9 Q. Now, I think you mentioned this, Mr. Lage, but I just  
10 want to make it clear, you're not responsible for setting  
11 Spirit's fares; right?

12 A. No, I'm not. I have no authority to do that.

13 Q. Your responsibility is to monitor that other airline  
14 fare activity; right?

15 A. That's correct.

16 Q. But in performing your monitoring and evaluation  
17 activity, you do make recommendations about how Spirit  
18 may -- should respond to particular actions by other  
19 airlines; right?

20 A. I do make recommendations at times just to help them  
21 out in making better decisions.

22 Q. Just to get a sense of the scope of markets that you're  
23 looking at, Mr. Lage, it's fair to say that in your role  
24 your primary focus is on the routes that Spirit serves  
25 nonstop; right?

1 A. Not necessarily the primary focus. I mean, most of the  
2 time it's consumed on nonstop markets, but there's also  
3 focus on connect markets as well.

4 Q. Mr. Lage, when you're talking about -- fair to say that  
5 you sometimes use the word -- the term "Spirit's network" to  
6 describe the nonstop markets that Spirit serves?

7 A. Well, Spirit network has nonstop and connect markets.  
8 So, as I said, we monitor both. Time permitting, we look at  
9 the entire network, whether it's nonstop or connect.

10 Q. Mr. Lage, in trying to understand a fare filed by  
11 another airline in one route you may examine fares filed by  
12 the same airline in other routes; right?

13 A. I don't specifically look at a fare that's filed by one  
14 airline and try to see if that same fare is filed somewhere  
15 else in our network. That's not something that we spend  
16 time on. So I'm not sure that --

17 Q. Mr. Lage, let me --

18 A. I'm not clear as to the question.

19 Q. Let me try to break it down a little bit.

20 A. Okay.

21 Q. There are occasions where you'll see another airline  
22 filing a fare in a market that Spirit serves nonstop; right?

23 A. I see that every day.

24 Q. Sometimes you'll identify that fare as potentially a  
25 cross-market initiative; right?

1 A. At times I will if, in my observation, it appears to be  
2 a cross-market initiative, yes.

3 Q. And at times -- and to help further evaluate whether or  
4 not that's a cross-market initiative you'll look at what  
5 that airline has done in other markets; right?

6 A. Correct. I look to see what the scope of the  
7 cross-market initiative is to see if it has an impact on  
8 more than the specific market that I'm looking at, and try  
9 to understand why that cross-market initiative is being  
10 filed.

11 Q. And so fair to say, Mr. Lage, that looking at those  
12 other markets can help you understand what your competitor  
13 is thinking; right?

14 A. That's basically what I do on a daily basis, understand  
15 trends in the industry.

16 Q. And understanding what another airline is thinking  
17 helps Spirit make better decisions; right?

18 A. Understanding how that competitor's filing their fares  
19 and setting the rules for those fares helps me understand a  
20 lot about how each competitor is competing in our network.

21 Q. Mr. Lage, when you're examining the fare filings in  
22 ATPCO, there is information that helps you in interpreting  
23 the strategic purpose of the other airlines' fare filing;  
24 right?

25 A. That is correct. The -- not just the fare level but

1 the rules and the footnotes of the fare.

2 Q. And some other things that you can look for are whether  
3 or not -- is looking at the markets where the other airline  
4 has filed a similar fare at the same -- in the same  
5 transmission; right?

6 A. I don't quite get that question.

7 Q. I'll step back. One of the things that you look for  
8 when -- one of the things that you look for when you're  
9 looking at ATPCO is you're able to see what the airline has  
10 done in other markets; right?

11 A. At any given time I can look at what the airline is  
12 doing in any specific market, that's correct.

13 Q. And you're also able to see the precise fare basis code  
14 that the airline is using; right?

15 A. Yes. Part of the data that we receive from ATPCO for  
16 filed fares, it shows that information.

17 Q. And you're also -- can look to see the footnote  
18 designator that the airline used; right?

19 A. That's part of the review process as well, yes.

20 Q. And, again, I think as we've already discussed, one of  
21 the things you look for is trying to identify whether or not  
22 the fare filed is a cross-market initiative; right?

23 A. There's a lot of things that I look for when I look at  
24 the fare that's filed. It could be a sale, it could be a  
25 core-structure fare, it could be a sub-structure fare.

1 There's various uses of filed fares in a market, specific  
2 market for each of our competitors.

3 Q. I appreciate that, Mr. Lage, but one of the things it  
4 might be is a cross-market initiative; right?

5 A. It's possible that it could be, yes.

6 Q. So let's turn to an example of an e-mail that you sent  
7 regarding a cross-market initiative that you've observed,  
8 and I'd ask you to look at tab ZB in that binder.

9 (On screen.)

10 A. What is the tab again?

11 Q. It's Z, zed, beta.

12 THE COURT: Well, I don't seem to have it. Wait  
13 one minute. Wait a minute. The fault is mine, I am sure.  
14 Let me look here.

15 MR. DOIDGE: You should have one binder for  
16 Mr. Lage. Everything will be in the same one.

17 THE COURT: I do have it. Proceed. I apologize.

18 MR. DOIDGE: Thank you, your Honor.

19 Q. Mr. Lage, ZB is an e-mail that you prepared on  
20 February 9th, 2019; is that right?

21 A. Yes.

22 Q. And this is an e-mail that you sent to Spirit's vice  
23 president of pricing and revenue management, Mr. Monaghan;  
24 right?

25 A. Yes.

1 Q. And you're providing Mr. Monaghan with information  
2 about other airline fare activity that you've observed;  
3 right?

4 A. That's correct.

5 MR. DOIDGE: Your Honor, plaintiff moves that ZB  
6 be admitted in evidence as Exhibit 793.

7 THE COURT: No objection?

8 MR. NAGLEY: No objection.

9 THE COURT: No objection. ZB is admitted,  
10 Exhibit 793.

11 (Exhibit 793 received in evidence.)

12 Q. So, Mr. Lage, let me direct you to the second paragraph  
13 of your e-mail, and in that paragraph you were describing a  
14 fare action by Southwest Airlines; correct?

15 A. Just give me a second to read the paragraph, please.

16 Q. Sure, that's fine.

17 (Witness reviewed document.)

18 A. Okay. This does appear to be describing a cross-market  
19 initiative by Southwest.

20 Q. And to help us all, the code WN, that's a reference to  
21 Southwest; right?

22 A. That would be correct, yes.

23 Q. And you noted you've used the term "CMI" here, and  
24 that's a reference to a cross-market initiative; right?

25 A. It was my observation at the time that this appeared to

1 be a cross-market initiative, yes.

2 Q. And here you're identifying that the cross-market  
3 initiative that Southwest had filed is directed at Delta  
4 Airlines; right?

5 A. That's correct. Based on the observations and the  
6 analysis I did, that was my conclusion at the time.

7 Q. And in the e-mail you were explaining that after  
8 Southwest filed the cross-market initiative, Delta canceled  
9 approximately 5,000 fares that were in markets that were  
10 within Southwest's network; right?

11 A. Yes.

12 Q. And so fair to say, Mr. Lage, that by canceling its  
13 fares, Delta was no longer offering those lower fares to  
14 consumers; right?

15 A. I have no way of verifying that those fares were the  
16 lowest in the market. They were filed fares, but I'm not  
17 sure by canceling it would have automatically increased  
18 fares.

19 Q. But you don't have any reason to think that it didn't;  
20 right?

21 A. Any reason that it did not?

22 Q. That it did not result in an increase in fares?

23 A. I have no way of verifying either way.

24 Q. Mr. Lage, we've seen in Exhibit 793 an example of a  
25 cross-market initiative. Fair to say that cross -- well,

1 let me step back.

2 Mr. Lage, you recognize that a purpose of a  
3 cross-market initiative can be to try to get another airline  
4 to remove a low fare in a different market; right?

5 A. Counsel, I recognize a cross-market initiative as a  
6 competitive response by airlines within networks, within the  
7 domestic U.S. network.

8 Q. Well, Mr. Lage, you have described cross-market  
9 initiative actions as trying to get another airline to  
10 cancel fares; correct?

11 A. I have seen cross-market initiatives where fares are  
12 filed and there's fare changes that happen in each of the  
13 carriers' network that were involved in the cross-market  
14 initiative. And so I view them as just competitive activity  
15 between those carriers to try and get an advantage over the  
16 other carrier.

17 Q. Let me ask my question again, Mr. Lage. You have  
18 described cross-market initiative actions as trying to get  
19 another airline to cancel fares; right?

20 A. I have described that the airline has canceled fares  
21 after the cross-market initiative was filed. Whether that's  
22 the intent of the carrier, that's -- again, I -- the  
23 cross-market initiative could have started way before I  
24 noticed it within our network. So all I have, all I'm going  
25 by is the data that I look at at that point in time and make



1 my best observation and analysis on what's happening in our  
2 network.

3 Q. Mr. Lage, let me ask you to turn to what's marked in  
4 your binder as Exhibit 688.

5 MR. DOIDGE: This is already in evidence so it can  
6 be published.

7 (On screen.)

8 Q. Are you there, Mr. Lage?

9 A. Yes, I am.

10 Q. Mr. Lage, this is an e-mail that you sent to  
11 Mr. Monaghan and Mr. Finelli on November 25th, 2019; right?

12 A. Correct.

13 Q. And you're reporting on fare actions taken by American;  
14 correct?

15 A. Just give me a moment to read this paragraph, please.

16 (Witness reviewed document.)

17 A. Okay.

18 Q. So there you're observing a fare action taken by  
19 American? That's one of the things you're observing; right?

20 A. Correct.

21 Q. And there you observe that Delta and United had filed  
22 walk-up fares at lower levels than the American fare; right?

23 A. Right. So at that time it appeared that those carriers  
24 had lower filed walk-up fares. That's correct.

25 Q. And you also observed that American had filed a

1 cross-market initiative in response to the Delta and United  
2 actions; right?

3 A. So I noticed that American had filed fares in these --  
4 in Delta and United markets to try to compensate for the  
5 possible -- to try to be more competitive in their markets,  
6 since they were higher than Delta and United in their own  
7 markets, yes.

8 Q. Well, Mr. Lage, let me ask you to focus on the second  
9 line in your e-mail. There you explain that American has  
10 tried unsuccessfully with the CMI to have Delta and United  
11 cancel fares; right?

12 A. Right. That was my observation. I mean, American is  
13 canceling their fares. So American is deciding, for  
14 whatever reason that I'm not aware of, that they didn't want  
15 to sell -- they didn't want to file fares that would be  
16 available at these levels.

17 Q. Mr. Lage, the question I'm asking you is very simple.  
18 There you've described the American effort as unsuccessful,  
19 and it was unsuccessful because Delta and United had failed  
20 to cancel fares; right?

21 A. Right. I mean, they were -- they try to put -- they  
22 try to file competitive fares in Delta and United markets to  
23 try to compensate for their loss in market share or revenue,  
24 possibly, in their own markets.

25 Q. You can put that exhibit aside.

1 A. Excuse me?

2 Q. You can put that one aside.

3 A. Okay.

4 Q. Let me just ask, Mr. Lage, cross-market initiatives are  
5 not something new in the airline industry; right?

6 A. No. They've been in the industry since I've started  
7 pricing in early '81, 1981.

8 Q. You've observed them throughout your career?

9 A. I have -- I observe them, they happen occasionally,  
10 yes. Once a month maybe I come across these cross-market  
11 initiatives.

12 Q. So, Mr. Lage, let me now turn to a different, slightly  
13 different topic and let's see how you use information in  
14 ATPCO regarding fare basis codes to assess the strategic  
15 purpose of another airline's fare action. So let me ask you  
16 to turn to Exhibit 332.

17 (On screen.)

18 A. What's the number again?

19 Q. 332. It should be -- it should be --

20 A. Okay.

21 Q. -- the third tab in your binder.

22 A. Yep, I'm there.

23 Q. Mr. Lage, this is an Excel document that you created  
24 with the title, "OA Structure Review." Right?

25 A. Yes. This is my own personal document.

1 Q. It's something that you regularly prepare; right?

2 A. It's a document that I don't regularly prepare. It's  
3 only on a time-permitted basis I update some of the  
4 information in this document. It's very dynamic, so -- but  
5 it doesn't allow me to update it on a daily basis, or weekly  
6 basis for that matter.

7 Q. You update it as frequently as you can?

8 A. As much as I can and whenever I can.

9 Q. And you use this tool to help you analyze industry  
10 pricing activity; right?

11 A. I use it to -- so I use it to give me a -- an  
12 indication of what data I'm seeing from ATPCO when it comes  
13 in the report. The report comes in, on average over a  
14 million fares filed for each report that ATPCO sends.  
15 That's four times a day. And what this document does for me  
16 is being able to identify specific fare action that I have  
17 observed might be related to a specific carrier or some  
18 other type of fares.

19 Q. So notwithstanding that there are a huge volume of  
20 fares, in some cases, being -- going through ATPCO, there  
21 are tools that you have available to help you process that  
22 information more efficiently?

23 A. We have multiple tools that we use to analyze the ATPCO  
24 data. This is just a personal tool that I use to further  
25 make my analysis more efficient.

1 Q. And one of the things that you do with this tool is to  
2 analyze other airlines' fare basis codes; right?

3 A. That's one of the main uses of this, yes.

4 Q. So let's look at an example.

5 MR. DOIDGE: And I'm prepared we're running close  
6 to time, your Honor.

7 THE COURT: If you want to stop now, it's  
8 convenient. It's up to you. Or another couple minutes.

9 MR. DOIDGE: I can do a couple of questions, your  
10 Honor.

11 THE COURT: Go ahead.

12 Q. Mr. Lage, we prepared a demonstrative. You can see it  
13 in your binder immediately after that tab called Lage  
14 Demonstrative D.

15 (On screen.)

16 Q. This reflects information taken from -- from  
17 Exhibit 332 reflecting what you've identified with respect  
18 to United Airlines' fare basis codes. Does that look right  
19 to you?

20 A. That's accurate, yes.

21 Q. And this is your decoder of the United Airlines fare  
22 basis codes; right?

23 A. I wouldn't classify it as my decoder. This is  
24 information that's publicly available in ATPCO, and I just  
25 put it in a format that's easier for me to view. Other than

1 any remarks that I might make on the side of this, but this  
2 is basically carving out ATPCO public information.

3 THE COURT: Thank you. I think with that  
4 explanation it's a good place to stop. We'll stop taking  
5 testimony at this time. You may step down, sir.

6 (Whereupon the witness stepped down.)

7 THE COURT: Total elapsed time, the government has  
8 used up five days, two hours, thirty minutes. The defense  
9 has used up four days, twenty minutes.

10 We'll stand in recess until 9:00 a.m. tomorrow  
11 morning. We'll recess.

12 THE CLERK: All rise.

13  
14 (Proceedings adjourned.)  
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C E R T I F I C A T E

I, Cheryl B. Palanchian, Court Reporter  
for the United States District Court for the  
District of Massachusetts, do hereby certify that  
the foregoing pages are a true and accurate  
transcription of my shorthand notes taken in the  
aforementioned matter to the best of my skill and  
ability.

/s/ Cheryl B. Palanchian 11/15/2023  
CHERYL B. PALANCHIAN

Registered Merit Reporter  
Certified Realtime Reporter